

Wallowa County, Oregon
Watershed Protection Area
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Zoning Ordinance
Adopted: 1988

ARTICLE 24

WATERSHED PROTECTION AREA, WPA

SECTION 24.010, PURPOSE: It is the finding of Wallowa County, OR that continued residential development, selected agricultural practices, and certain industrial and commercial uses pose a threat to the City of Enterprise municipal water source, and if left unregulated, such use and development poses an immediate and unacceptable threat to the public, health, safety, and welfare of more than 2,000 residents dependent upon that water source. The purpose of this WPA is to provide additional restrictions upon uses permitted outright or conditionally in the underlying zones in order to protect the purity of the City of Enterprise municipal water source. The zoning maps for Wallowa County shall designate areas to be encompassed by the WPA designation. The WPA designation on the zoning maps shall be in addition to the zone as described by this ordinance, as applied to the area within described by this ordinance, as applied to the area within the WPA.

SECTION 24.015, ADDITIONAL RESTRICTIONS: Within the WPA designated on the zoning maps, the additional restrictions, prohibitions and requirements set forth in Sections 24.010 through 24.080 shall apply and where inconsistent with the provisions of the underlying zone or other provisions of this ordinance or other ordinance, shall supersede same.

SECTION 24.020, LIVESTOCK RESTRICTIONS: Maintenance of domestic livestock within the WPA is subject to the following restrictions and limitations:

1. Definitions:

A. As used herein, animal unit means one cow and calf, one horse, donkey or mule, two pigs or five sheep.

B. Density means the number of animal units carried per acre of pasture or other fenced enclosure, and shall be calculated based upon the number of animal units maintained in a fenced enclosure. Enclosure of livestock, for limited times and durations, on portions of a parcel at night, for customary or usual calving, normal and customary animal husbandry purposes, other than livestock feeding, shall not be subject to the density limitations of this section.

2. Limitations on density: In the WPA the following limitations shall apply to the keeping of domestic livestock:

A. Within 1,000 feet of a spring utilized as a municipal water source the maximum density shall be two animal units per acre.

B. In all other areas of the WPA the maximum density shall be ten animal units per acre.

C. At no time shall the maintenance of domestic livestock up to the density limits set forth above

be such as to result in an accumulation of animal waste that could cause, materially contribute to, or create a material risk of, any adverse effect upon the city of Enterprise municipal water source.

3. Applicability of density restrictions: Restrictions contained in this section shall be applicable to all livestock operations within the WPA, including those established prior to the effective date hereof. Existing livestock uses not in conformance with the limitations contained herein shall be in compliance with the terms hereof within one hundred twenty days of the effective date of this ordinance.

SECTION 24.025, STORAGE OF CROPS: No storage of potatoes or other putrescible crops which are likely to ferment or rot are permitted within 1,000 feet of the diversion point for any of the City of Enterprise springs, as marked upon the ground by the city. Beyond 1,000 feet storage of potatoes or other putrescible crops likely to ferment or rot is permitted if stored in silos or other storage facility adequate to insure there will be no leaching into the groundwater.

SECTION 24.030, CHEMICAL APPLICATIONS: Application of fertilizer pesticide, and herbicide is prohibited within 500 feet of the city's springs unless authorization for such application is received from the Wallowa County Court. Aerial application of fertilizer, pesticide, and herbicide is prohibited within one quarter mile of the city's springs, as designated on the ground.

SECTION 24.035, FUEL STORAGE: Storage of gasoline, fuel oil, diesel or other petroleum distillates (hereafter "fuel storage") is subject to the following restrictions and limitations.

1. Prohibited fuel storage: No fuel storage is permitted within 1,000 feet of the City of Enterprise springs.

2. Fuel storage permitted outright: At a distance in excess of 1,000 feet of the City of Enterprise springs, fuel storage is permitted outright in above-ground tanks not to exceed five hundred gallons in capacity, provided, however, that a buried tank may be installed for the purpose of storing fuel of a type which is required to be stored in buried tanks under provisions of Oregon law. Up to four separate five hundred gallon fuel storage tanks, which are not cross-connected, for storage of a particular fuel type, may be permitted outright under this subparagraph.

3. Fuel storage permitted conditionally: Fuel storage tanks in excess of five hundred gallons are permitted only as a conditional use within the WPA upon the Planning Commission's findings that:

A. There is a need for said fuel tank within the WPA that cannot be reasonably satisfied by the applicant in an alternate location outside the WPA.

B.. The applicant has a need for storage of fuels in tanks of the capacity requested that cannot reasonably be met by fuel tanks permitted outright or of a size smaller than requested.

C. In the event of a major spill or leak involving the proposed tank, after consideration of any impoundment or other mitigating measures proposed or required by this ordinance or the Planning Commission, said spill will not cause, materially contribute to, or create a material risk of, an adverse effect upon the City of Enterprise water source.

All such permits shall require, as condition thereof, compliance with the standards contained in

subsection 4.

4. Required protective measures: In the event a permit is granted for a fuel storage tank under this subsection 3, the Planning Commission shall require, for all above ground tanks of 1,000 gallons or more, that a berm and an impervious surface be installed to provide a catch basin to contain any fuel spills. In the event a buried fuel storage tank of 1,000 gallons capacity, or more, is approved, installation of monitoring wells adequate in number, location, and design to detect any leakage from said fuel tank shall be required.

5. Pre-existing buried tanks: Within one year from the effective date of this ordinance, all existing buried fuel tanks of 1,000 gallons capacity, or more, shall be abated unless a permit is obtained for said tank and monitoring wells installed within the said one year period or within such other time as may be imposed by the Planning Commission. It is the intent of this subsection to require all existing buried fuel storage tanks over 1,000 gallons to be removed unless they meet the criteria specified in subsections 3 and 4, including installation of monitoring wells.

6. Pre-existing above ground tanks: All existing above ground tanks in excess of 5,000 gallons capacity shall be abated within one year of the effective date of this ordinance unless a permit therefore is received under subsection 3 above. It is the intent of this subsection to require removal of all such tanks unless compliance with the criteria specified in subsections 3 and 4, including installation of a berm and impervious surfaces.

7. Public nuisance: All leaking fuel storage tanks within the WPA are hereby declared a public nuisance and Wallowa County, the city of Enterprise, or any affected person, may maintain an action in circuit court for the state of Oregon to obtain an order requiring the abatement of any such leaking fuel tank.

8. Monitoring wells: Whenever monitoring wells are required to be installed under the provisions of subsection 4, a monitoring well or wells adequate in depth, design and proximity to the fuel tank to have reasonable assurance of detection of leaking fuel into the ground water shall be required and, depending upon topography, more than one monitoring well may be required. The monitoring well facilities required may be varied in accordance with the risk to the Enterprise water source created by the proposed fuel tank and a greater number of wells and more stringent specifications may be required for fuel tanks which, due to size or proximity to the water source, create serious risks to the purity of such water source.

9. Permission to draw samples: It shall be a condition of any permit for a fuel storage tank for which monitoring wells are required under subsection 4 that the owner of the property on which said monitoring wells are installed shall grant permission to responsible officials of either the city of Enterprise, Wallowa County, state of Oregon, or the United States government to enter said premises at reasonable times and reasonable hours for the purpose of drawing water samples from said monitoring wells. In the event that a property owner refuses to allow access to his property for said purpose, the permit to install the fuel storage tank shall immediately terminate and the fuel storage tank shall be immediately abated.

SECTION 24.040, CHEMICAL STORAGE: Storage of chemicals, including pesticides, herbicides, and fertilizers, is prohibited in the WPA, except as permitted by this subsection or in conjunction with a use permitted by Section 24.050. Storage of chemicals in conjunction with farm and domestic use is permitted, but only in amounts customarily required for continuing the

farm operation or for domestic use if stored above ground in a site protected from weather and, if stored in the manufacturer's containers or other approved storage means. Disposal of used or empty containers shall only be in the manner required by Oregon law and at sites approved under Oregon Law. Storage of chemicals in conjunction with a commercial application business is prohibited in the WPA, except, however, as permitted at the Joseph Airport. Storage and handling of chemicals in exclusive conjunction with an aerial application business is prohibited at the Joseph Airport unless the airport has a pesticide management site plan in full compliance with federal law and Oregon law and as approved by the Oregon Department of Environmental Quality. Pending development and implementation of a pesticide management site plan, aerial application activity may occur from the airport provided the Director issues a zoning permit and the applicator provides evidence an interim management plan has been accepted by the DEQ for the operation. The Director's permit shall be good for a period of twelve months. Utilization of the airport for application of fire retardants shall comply with the provisions required for other chemicals associated with aerial application.

SECTION 24.045, SOLID WASTE DISPOSAL: On-site disposal of putrescible waste, garbage, or other solid waste is prohibited within the WPA. Solid waste transfer sites, as cited and approved by the DEQ may be permitted within the WPA provided the site is found to present no threat to the city's springs.

SECTION 24.050, COMMERCIAL AND INDUSTRIAL USES: Commercial and industrial uses are permitted when allowed in the underlying zone subject to the procedures and restrictions in the underlying zone and subject to the following additional limitations and restrictions:

1. New commercial and industrial uses or changes in use or the enlargement and alteration of commercial and industrial uses existing as of the effective date of this ordinance and permitted outright in the underlying zone are permitted outright in the WPA when no chemicals or other products are used, produced by, or commonly associated with the activity which, in the event of introduction of a large quantity thereof into the ground water, might cause, materially contribute to, or create a material risk of, any adverse effect upon the city of Enterprise municipal water source.
2. A new commercial or industrial use or change in use not permitted outright under subparagraph 1 above may be permitted by the Commission after issuance of a special use permit, following public hearing, upon a finding that the proposed use, considering the quantity and character of the chemical or other product, the methods of use, and the distance from the city of Enterprise municipal water source, would not have an adverse effect upon the city of Enterprise municipal water source in the event of a major spill, improper storage and handling or improper disposal of said chemical or other product. If said use is permitted outright in the underlying zone, review by the Commission shall be limited to the determination of whether the standard contained in this subparagraph is met. Conditions may be imposed upon the permit by the Commission to insure protection of the city of Enterprise municipal water source.
3. Enlargement of, or alteration of, a commercial or industrial use existing as of the effective date of this ordinance, or the addition of a process or ancillary facility in conjunction with a use existing as of the effective date of this ordinance, not permitted outright under subparagraph 1 above, may be permitted in the WPA upon issuance of a special use permit and upon finding the proposed enlargement or expansion of the use, considering the quantities and character of the

chemical or other product, the method of use, and the distance from the city of Enterprise water source would not have an adverse effect, materially contribute to an adverse effect, or create a material risk of an adverse effect, upon the city of Enterprise municipal water source, and after consideration of any impoundment or other mitigating measures imposed by state and federal law, this ordinance, the Planning Director, or the Commission. Upon receipt of an application to enlarge or alter an existing commercial or industrial use or to add a process or ancillary facility in conjunction with a pre-existing use, said permit not reviewable under the provisions of subparagraph 1 above, the Director shall notify the city and, prior to scheduling a public hearing before the Commission, shall arrange a conference to be attended by the applicant, the city's representative, and the Director. The purpose of the conference shall be to review the application, the nature of the processes and chemicals, and the impoundment and other mitigating measures to be employed by the applicant to comply with the standards of this subparagraph. If, following the conference, the city and the applicant are in agreement, the application meets the burden of proof set forth in this subparagraph, the director shall proceed to review and issue the special use permit under the procedures set forth in Section 24.080 1. If, following the conference, the city and the applicant cannot reach agreement as to the compliance of the of the application to the standards set forth in the subparagraph, the Director shall schedule a public hearing before the Commission as required by Section 24.080 1. Failure to conduct the conference within 45 days of the date of the applications submission shall require the Director to schedule the hearing before the Commission. If the proposed use or development is permitted outright in the underlying zone, review by the Director or Commission shall be limited to determination of the application's compliance with the standards set forth in this subparagraph. In the event the proposed use complies with federal and state laws and regulations, the city of Enterprise, or other opponent, shall have the burden of coming forth with evidence sufficient to provide a reasonable basis for concluding that said state and federal laws and regulations are inadequate to assure compliance with the standards set forth in this subparagraph, upon presentation of such evidence, the burden shall shift to the Director or Commission which insure the protection of the city of Enterprise municipal water source.

SECTION 24.055, RESIDENTIAL USES: Within the WPA the minimum lot size allowed for single family dwellings shall be five acres.

SECTION 24.060, SEPTIC TANKS: No septic tank or other on-site subsurface sewage disposal system shall be installed within three hundred feet of the city's springs. Privies shall not be permitted within the WPA, except for portable privies used on a temporary basis in conjunction with construction activity.

SECTION 24.065, OTHER USES: In the event that any use, otherwise permitted either outright or conditionally, in the underlying zone, will cause, materially contribute to, or create a material risk of any adverse effect upon the city of Enterprise municipal water source, then said use is prohibited unless permitted by the Commission subject to conditions adequate to assure the protection of the city's water source. The burden of proving the adverse effect shall be upon the city or other opponent of the use.

SECTION 24.070, USE REVIEW REQUIRED: In addition to the uses and developments requiring permit application and review under the provisions of the underlying zones, the

following uses and developments shall require review and authorization by the Director or Commission.

1. Storage of crops pursuant to Section 24.080 1.
2. Fuel storage as provided for in Section 24.050.
3. Chemical storage at the Joseph airport pursuant to Section 24.080 2, the Commission to be the review authority.

SECTION 24.075, VARIANCE: Variance to a regulation or restriction enacted through the WPA

which affects a use or development permitted by or unregulated within the underlying zone may be permitted by the Commission, following public hearing, provided the requested variance:

1. Relates solely to a regulation or restriction of the WPA and is not a variance which can be heard pursuant to the provisions of Article 8.
2. The variance is the minimum variance necessary to alleviate a hardship on the property owner related to the use and enjoyment of the property caused by the regulation or restriction as enacted within the WPA.
3. The Commission finds the variance will not cause, materially contribute to, or create a material risk of, any adverse effect upon the city of Enterprise municipal water source, under reasonably possible hydrologic or geologic conditions.

SECTION 24.080, BURDEN OF PROOF: The burden of proof shall be upon the applicant except where specifically provided to the contrary.

SECTION 24.085, PROCEDURES: In addition to the review procedures specified in this ordinance, the following review procedures shall apply to all land within the WPA.

1. Administrative action: The following procedures shall apply to review and authorization of uses and developments permitted outright in the underlying zone or requiring review and authorization under Section 3.770 and which do not require notice be given or public hearing be conducted.
 - A. The Wallowa County Planning Department shall provide the city of Enterprise written notice of review for all applications requiring administrative action. The notice of review shall provide the city no less than thirty days to review the application and provide a written response.
 - B. The Director shall take final action on an application brought forth under this subsection no sooner than 31 days following the date of the notice of review or upon receipt of the city's written response, whichever occurs first. The Director shall inform the city of all final actions taken on applications reviewed administratively.

The notice of final action given the city shall include the findings of act used to establish conformance with the requirements and restrictions of the WPA and any conditions of approval related to the requirements and restrictions contained herein on the grounds for denial of the application.

- C. Applications for single family dwellings permitted outright in the underlying zone shall be exempt from the notice of review procedures of the above provided the residence is to be sited

on a lot or parcel no less than five acres in size and the residence is to be cited no closer than 1/4 mile from the city's springs.

2. Reviews requiring notice of hearing: The following procedures shall apply to all permit reviews which require notice and/or hearing. These include home-based occupation permits, conditional uses, non-conforming uses, variances, reviews, zone ordinance text and/or map amendment, land use plan text and/or map amendments and uses or developments requiring such review.

A. The city of Enterprise shall be given written notice of all applications to the Planning Department which fall within the above categories and which relate to lands within the WPA.

B. The city of Enterprise shall be given no less than thirty days to review the application and prepare a written response to the Director or for submission into the record of the hearing before the Commission, whichever is the review authority.

C. The city of Enterprise shall be notified, in a timely manner, of all final actions taken on applications subject to these review procedures. The decision of the Director shall be rendered no sooner than thirty one days from the date of notice to the city or upon receipt and review of the city's written response, whichever occurs first. The notice of decision by the Director or Commission shall include the findings of fact used to establish conformance with the regulations and restrictions of the WPA. The conditions of approval related to the WPA regulations and restrictions or the grounds for denial of the application.

D. Hearings before the Commission initiated solely by provisions of the WPA and not otherwise required shall be restricted to the single issue of the application's compliance with the relevant regulations and restrictions of the WPA.

3. Appeal: The city of Enterprise shall have standing to appeal any actions taken by the Director or Commission on permits and other reviews within the WPA and for which the city is entitled to notice.

SECTION 24.090, SPECIAL PROCEDURES: In addition to the review procedures specified in this ordinance, the following review procedures shall apply to all land located within the watershed protection area as designated in Section 24.010 through 24.080 of the Wallowa County Ordinance.

1. Excluded developments: There shall be excluded from the procedures and requirements of this section all residential minor partition applications if the site thereof is more than 1320 feet from the exterior boundary of the city of Enterprise municipal water source provided the residential use is permitted outright in the underlying zone and none of the parcels is less than five acres in size. All other partitions and subdivisions shall be subject to review under the procedures of this section.

2. Reviews requiring notice:

A. The city of Enterprise shall be given written notice of all applications submitted to the Planning Department for minor partitions, major partitions, subdivisions and amendments to the text of this ordinance which relate to the any lands and zones within the WPA.

B. Notice of review to the city of Enterprise shall give the city no less than thirty days to review the requests, prepare a written response to the Wallowa County Planning Director or Commission, whichever is responsible for the review and decision.

C. The Director shall inform the city of all final actions taken on applications for minor partitions, major partitions, subdivisions or amendments to the text of this ordinance relating to lands within the WPA. Said notice of action given the city shall include the factual evidence

used to establish conformance with the requirements and restrictions of the WPA contained in the Wallowa County zoning ordinance or grounds for denial of the application.

D. The city of Enterprise has standing to appeal any action taken by the Director or Commission on land division applications issued within the WPA and for which the city is to receive notice.